



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Q-M-, INC.

DATE: JAN. 6, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development and consulting company, seeks to employ the Beneficiary as a software engineer under the immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The Director's decision will be withdrawn and the case will be remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 4, 2014. The visa classification sought for the Beneficiary is advanced degree professional, which is available under section 203(b)(2) of the Act "to qualified immigrants who are members of the professions holding advanced degrees or their equivalent." As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on August 2, 2013, and certified by the DOL (labor certification) on March 13, 2014. To be eligible for the job offered and the visa classification requested in this petition, the Beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date.¹ *See Matter of Wing's Tea House*, 16 I&N 158, 160 (Act. Reg. Comm. 1977). The priority date of the instant petition is August 2, 2013. The Petitioner must also establish its continuing ability to pay the proffered wage from the priority date onward. *See* 8 C.F.R. § 204.5(g)(2) and *Matter of Great Wall*, 16 I&N 142, 144-145 (Act. Reg. Comm. 1977).

The Director's decision was issued on April 24, 2015. It denied the petition on two grounds: (1) the evidence of record did not establish that the Petitioner has made a *bona fide* job offer to the Beneficiary; and (2) while the evidence of record showed that the Petitioner had the ability to pay the proffered wage to the instant Beneficiary, it did not establish that the Petitioner has the ability to pay the proffered wages of all the other beneficiaries of the immigrant and nonimmigrant petitions it has filed.

¹ The priority date of an immigrant petition is the date the underlying labor certification application was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The petitioner filed a timely appeal, which was supplemented by a brief from counsel and supporting documentation. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

Upon review of the entire record, including the materials submitted on appeal, we conclude that the Petitioner has overcome the Director's grounds for denial. Specifically, we find that the Petitioner has established by a preponderance of the evidence that it has made a *bona fide* job offer to the Beneficiary and that it has the ability to pay the proffered wages not only of the instant Beneficiary, but of all the other beneficiaries of its petitions. Accordingly, the Director's denial decision of April 24, 2015, will be withdrawn.

Based on the evidence of record, however, we will not approve the petition because it is unclear that the Beneficiary has the requisite educational degree to be eligible for classification as an advanced degree professional and to qualify for the job offered under the terms of the labor certification.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree," in pertinent part, as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) specifies the evidentiary requirements to establish eligibility for classification as an advanced degree professional. It reads as follows:

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

As previously stated, the Beneficiary must also have all the education, training, and experience specified on the labor certification as of the petition's priority date. In Part H of the ETA Form 9089 the Petitioner specified the following education, training, and experience requirements for the job of software engineer:

- | | | |
|------|--|--|
| 4. | Education: Minimum level required: | Master's degree |
| 4-B. | Major Field of Study: | Computer Science, Engineering (Any), Math or related |
| 5. | Is training required in the job opportunity? | No |

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6.	Is experience in the job offered required?	Yes
6-A.	If Yes, number of months experience required	24
7.	<i>Is there an alternate field of study that is acceptable?</i>	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	If Yes, number of months experience in alternate occupation required.	24
10-B.	Job title of acceptable alternate occupation:	Computer/Engineering Professional

Thus, the minimum educational requirement for the job is a master's degree in computer science, engineering, mathematics or a related field, or a foreign educational equivalent. No alternate field of study is acceptable. The minimum experience requirement for the job is two years as a software engineer or as a computer or engineering professional. No alternate combination of education and experience is acceptable.

As evidence of the Beneficiary's educational credentials the Petitioner submitted copies of the following pertinent documentation with the Form I-140 petition:

- A diploma and consolidated memorandum of marks from [REDACTED] in [REDACTED] India, certifying that the Beneficiary received the "Degree of Bachelor of Commerce" on February 7, 2002, following the completion of a three-year academic program.
- A "Provisional Certificate," consolidated memorandum of marks, and transcripts from [REDACTED] in [REDACTED] India, dated February 21, 2007, certifying that the Beneficiary passed the master of computer applications examination in December 2006 and was placed in the first division following the completion of a three-year academic program.
- A diploma and transcript from [REDACTED] in [REDACTED] California, showing that the Beneficiary was awarded the degree of Master of Science in Computer Science on May 31, 2011, following the completion of a four-trimester academic program.

As evidence of the Beneficiary's employment experience, the Petitioner submitted a letter from the HR Manager of [REDACTED] India, dated December 16, 2009, stating that the Beneficiary was employed by the company as a full-time software test engineer from February 1, 2007 to November 30, 2009, and describing his job duties.

In the denial decision of April 24, 2015, the Director found that the Beneficiary "qualifies as an alien with an advanced degree" based on his Master of Science in Computer Science from [REDACTED]

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That institution, however, has not been accredited by a recognized accrediting agency. For the reasons set forth below, a degree from an unaccredited institution will not be considered an advanced degree under 8 C.F.R. § 204.5(k)(2).

In the United States institutions of higher education are not authorized or accredited by the federal government.² Instead, the authority to operate and issue degrees is granted at the state level. State approval to operate, however, is not the same as accreditation by a recognized accrediting agency.

Accrediting agencies are private educational associations that develop evaluation criteria reflecting the qualities of a sound educational program, and conduct evaluations to assess whether institutions meet those criteria.³ Institutions that meet an accrediting agency's criteria are then "accredited" by that agency.⁴

The U.S. Department of Education (DOE) and the Council for Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, are the two entities responsible for the recognition of accrediting agencies in the United States.

While the DOE does not accredit institutions, it is required by law to publish a list of recognized accrediting agencies that are deemed reliable authorities as to the quality of education provided by the institutions they accredit.⁵ According to the DOE, "[t]he goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality."⁶ Accreditation ensures the nationwide recognition of a school's degrees by employers and other institutions, and also provides institutions and their students with access to federal funding.

The CHEA plays a similar oversight role. The presidents of American universities and colleges established CHEA in 1996 "to strengthen higher education through strengthened accreditation of higher education institutions."⁷ Like the DOE, CHEA recognizes accrediting organizations. "Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established."⁸ According to CHEA, accrediting institutions of higher education "involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort."⁹

The DOE and CHEA recognize the

as the accrediting association with

² See <http://ope.ed.gov/accreditation>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ <http://www2.ed.gov/print/admins/finaid/accred/accreditation.html>.

⁷ www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf.

⁸ *Id.*

⁹ *Id.*

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jurisdiction over California, where [REDACTED] is located.¹⁰ [REDACTED] website lists all accredited institutions within its jurisdiction, and [REDACTED] does not appear on that list as either an accredited institution or as a candidate for accreditation. See [REDACTED] (accessed November 13, 2015). Thus, [REDACTED] has not been accredited by a recognized accrediting agency.

Accordingly, the Beneficiary's master's degree from [REDACTED] will not be recognized as an advanced degree for immigration purposes under 8 C.F.R. § 204.5(k)(2). It does not establish the Beneficiary's eligibility for classification as an advanced degree professional under section 203(b)(2) of the Act nor his qualification for the job offered under the terms of the labor certification.

As for the Beneficiary's master's degree studies at [REDACTED] the record shows that he was issued a "Provisional Certificate" but there is no documentary evidence that he was issued a formal master's degree. Thus, it is not clear that the Beneficiary completed all the requirements for a degree.

Since the record is unclear as to whether the Beneficiary has the requisite educational credential(s) to be eligible for classification as an advanced degree professional and to qualify for the job offered under the terms of the labor certification, the case will be remanded to the Director for further consideration of this and any other issue(s) that may be deemed relevant. The Director may request further evidence from the Petitioner, if necessary, and shall accord the Petitioner an appropriate time period to respond.

ORDER: The decision of the Director, Texas Service Center, is withdrawn. The matter is remanded to the Director, Texas Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of Q-M-, Inc.*, ID# 15381 (AAO Jan. 6, 2016)

¹⁰ See <http://www.chea.org/Directories/regional.asp>.